

Appl. No. 10/764,190
Atty. Docket No. 9495
Response dated October 3, 2007
In response to Office Action of April 3, 2007
Customer No. 27752

REMARKS

Claim Status

Claims 1, 4-13, 17 and 18 are pending. Claims 1, 4-13, 17 and 18 stand rejected under 35 USC § 112. Claims 1 and 4 stand rejected under 35 USC § 102. Claims 5-13, 17 and 18 stand rejected under 35 USC § 103. With this response, claim 1 is amended. No claims are withdrawn, canceled, or added.

Rejections Under 35 USC § 112 Second Paragraph

Claims 1, 4-13, 17 and 18 stand rejected under 35 USC § 112 second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Applicant has amended claim 1 to more clearly describe the non-linear portion of the top support member and to provide proper antecedent basis. Therefore, the Applicant submits that independent claim 1, as currently amended, as well as claims 4-13, 17 and 18, which depend therefrom, are definite. As a result, the Applicant respectfully requests reconsideration and withdrawal of the § 112 rejections for claims 1, 4-13, 17 and 18.

Rejections Under 35 USC § 102 Over Ingelson

Claims 1 and 4 stand rejected under 35 USC § 102(b) as being unpatentable over Ingelson (US 2,747, 959). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 102 over the Ingelson reference for the reasons discussed below.

Independent claim 1, as currently amended, recites in part a “shelf display apparatus” with “a substantially horizontal top support member.” The Office Action cited an “unnumbered top edge” of a “vertical portion 2” of Figure 1 of the Ingelson reference (col. 2, line 27), against the substantially horizontal top support member of the Applicant’s claim 1. (Office Action, Page 3.) The Applicant respectfully submits that a top edge of a “vertical portion” cannot be considered “a substantially horizontal top support member.” as recited in part in the Applicant’s claim 1.

Further, independent claim 1, as currently amended, recites in part a “shelf display apparatus” with a “top support member...oriented in a second plane parallel” to “a shelf

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in a first plane.” In other words, the top support member is parallel to the shelf. By contrast, the “vertical portion 2” of the Ingelson reference appears to be oriented perpendicular to a counter top C (Figure 1), not oriented parallel to “a shelf in a first plane,” as recited in part in the Applicant’s claim 1.

Still further, independent claim 1, as currently amended, recites in part a “shelf display apparatus” with a “top support member” that includes “a proximate end” and “a distal end” wherein “the proximate end is rigidly connected solely to the first upper end” of a first vertical support member and “the distal end is rigidly connected solely to the second upper end” of a second vertical support member. Support for these sole connections can found in the specification of the Application, as originally filed, on page 4, lines 11-19 and on page 5, lines 11-20, along with Figures 2-7. The Office Action cited “unnumbered vertical ends” of a “vertical portion 2” of Figure 1 of the Ingelson reference (col. 2, line 27), against the vertical support members of the Applicant’s claim 1. (Office Action, Page 3.) However, the unnumbered vertical ends of the vertical portion 2 of the Ingelson reference appear to be connected continuously along their heights, not connected solely to the unnumbered top edge of the vertical portion 2. As a result, the vertical portion 2 does not have a “top support member” that includes “a proximate end” and “a distal end” wherein “the proximate end is rigidly connected solely to the first upper end” of a first vertical support member and “the distal end is rigidly connected solely to the second upper end” of a second vertical support member” as recited in part in the Applicant’s claim 1.

For these reasons the Applicant submits that the Ingelson reference does not disclose each and every element of the Applicant’s independent claim 1. Therefore, the Applicant respectfully requests withdrawal of the § 102 rejections for claim 1, and for claim 4, which depends therefrom.

Rejections Under 35 USC § 103 Over Ingelson and Heroy

Claims 5-13, 17 and 18 stand rejected under 35 USC § 103(a) as being unpatentable over Ingelson (US 2,747,959) in view of Heroy (U.S. 3,669,278). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 103 over the Ingelson and Heroy references for the reasons discussed below.

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As described above, the Ingelson reference does not appear to disclose “a substantially horizontal top support member” that is oriented parallel to a shelf, and connected solely to upper ends of vertical support members, as recited in part in the Applicant’s independent claim 1, as currently amended. From the Applicant’s review, the Heroy reference does not appear to cure this deficiency. For this reason the Applicant submits that the Ingelson reference and the Heroy reference, independently or in combination, do not disclose each and every element of the Applicant’s independent claim 1. As a result, the Applicant’s independent claim 1 would not have been obvious to one of ordinary skill in the art at the time the invention was made. Therefore, the Applicant respectfully requests withdrawal of the § 103 rejections for claims 5-13, 17 and 18, which depend from independent claim 1.

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Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the cited references. Accordingly, the Applicant respectfully requests reconsideration of this application and allowance of the pending claims.

Respectfully submitted,

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